

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

DIANA CROUCH, et al.,

Appellants,

v.

CITY OF KANSAS CITY, MISSOURI,

Respondent.

DOCKET NUMBER WD76824

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: August 5, 2014

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Patrick W. Campbell, Judge

JUDGES

Division One: Ellis, P.J., and Mitchell and Gabbert, JJ.

CONCURRING.

ATTORNEYS

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Attorneys for Appellants,

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

DIANA CROUCH, et al.,)
)
Appellants,)
v.) **OPINION FILED:**
) **August 5, 2014**
CITY OF KANSAS CITY, MISSOURI,)
)
Respondent.)

WD76824

Jackson County

Before Division One Judges: Joseph M. Ellis, Presiding Judge, and Karen King Mitchell and Anthony Rex Gabbert, Judges

Appellants, Diana and Dennis Crouch, appeal from the circuit court's grant of summary judgment in favor of Respondent, the City of Kansas City (City), on their claim for wrongful death of their mother, Dorothea Crouch. Appellants allege that Dorothea died as the result of a head injury suffered from a fall that occurred when employees of the Kansas City Fire Department were attempting to carry her up the stairs in her home. The circuit court found that the City was entitled to sovereign immunity, and it granted summary judgment in the City's favor.

AFFIRMED.

Division One holds:

1. In determining whether a municipality is protected by sovereign immunity, a court must decide, as a matter of law, whether the activity giving rise to the allegedly tortious conduct is a governmental function or a proprietary one.
2. In deciding whether a particular function is governmental or proprietary, a court must look to the nature of the activity performed, not the nature of the tort.
3. The mere absence of an emergency does not establish that a function performed by a municipal entity is proprietary.

4. The fact that non-emergency lift assists, like the one performed in this case, directly benefit only the requesting citizen and his or her caretakers does not render the function proprietary.
5. That a municipality, through its charter, assigned a function to one of its departments does not automatically make that function governmental in nature.
6. The identity of the person or entity performing the function does not determine its character.
7. Because sovereign immunity is the rule, rather than the exception, when an individual sues a municipality, it is that individual's burden to demonstrate that the municipality was engaged in a proprietary function at the time of the allegedly tortious conduct, thus subjecting it to liability. If the individual fails to meet this burden, the function will be deemed governmental, and immunity will apply.

Opinion by: Karen King Mitchell, Judge

August 5, 2014

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